Civil Writ Petition No.598/90
Bachchu Lal Sharma Vs. State & Others

Date of Order ::: 19/07/05

Hon'ble Mr. Justice Ajay Rastogi

Mr.Mahendra Shah for petitioner
Mr.B.K.Sharma, Dy.Govt.Advocate for State .

Instant writ petition has been filed for regularisation on the post of Store Keeper (LDC) merely on the basis of his working and discharging duties of store keeper, from the date of initial appointment dt.07/04/77 (Ann.1) on the post of Helper.

Facts, in brief, are that petitioner was initially appointed as Helper vide order dt.07/04/77 (Ann.1) in pay scale of Rs.250-360. Contention of petitioner is that from the date of his initial appointment (supra), respondents have been taking work of post of Store Keeper which is in cadre of LDC as is apparent from documents produced as Ann.2 to 9 to the writ petition. He finally prayed for grant of regular pay scale of the post of Store Keeper (LDC) of which he is discharging duties.

Shri Mahendra Shah urged that since petitioner has been working and discharging duties of the post of Store Keeper (LDC), he is entitled for regularisation on the said post from the date, he was directed to work and discharge duties w.e.f.,

07/04/77. In support of his contention, Shri Shah relied upon unreported judgment of this Court in CWP No.1013/1989 decided on 01/09/93 (Ramswaroop Sharma Vs. State & Ors).

Respondents have filed reply to writ petition and have disputed with regard to working & discharge of duties as Store Keeper as alleged by petitioner. Shri B.K.Sharma, Dy.Govt. Advocate has submitted that after examining his eligibility, he was given appointment initially on the post of Helper vide order dt.07/04/77 on ad hoc basis and which is not an appointment under Work-charged Service Rules. It has also been submitted that candidature of petitioner was considered for regular appointment under Rajasthan Engineering Subordinate Service (PHED Branch), Rules, 1967 ("***Rules, 1967***"), and after due consideration of his candidature, he was appointed on regularly basis as Helper under R.25 of Rules, 1967 and was confirmed vide order dt.16/01/86 (Ann.R.2) with effect from 07/04/77.

During pendency of writ petition, an additional affidavit has been filed by respondents inter alia stating that petitioner has further been promoted as Fitter Gr.II vide order dt.05/12/02 (AnnR/3) and that apart, he was further considered for grant of selection scale on completion of 9, 18 & 27 years of service vide order dt.19/07/04 (AnnR/5). According to respondents,petitioner has been working on substantive post of Fitter Gr.II in pay scale of

Rs.4000-6000.

Shri B.K.Sharma, Counsel for the State urged that after initial appointment as Helper, petitioner was considered under Rules, 1967 and according to his placement in seniority of the cadre, he was promoted as Fitter Gr.II in accordance with Rules, 1967. However, respondents have disputed the contention of petitioner that he has been working & discharging duties as Store keeper.

I have considered rival contentions of the parties and material placed on record. The contention of petitioner that since he was working as Storekeeper despite his appointment as Helper, so he is entitled for regular pay scale of the post of which has been discharging duties, in my opinion, is without any substance, for the reason that working of & discharging duties of the post of Storekeeper has been disputed by respondents; and that apart, once he is member of service under Rules, 1967, he can be considered for appointment/promotion for discharge of his duties under scheme of Rules, 1967 and not on mere his allegedly working as Storekeeper which is not the post included in Schedule appended to the Rules of 1969. Therefore, once petitioner is member of the scheme of rules, 1967, his mere working & discharging of duties as Store keeper, as alleged though disputed will not make him entitled for grant of pay scale of the post of Store keeper (LDC).

Further contention advanced by Shri Shah

that appointment of petitioner was under Work Charged Service Rules, 1964, respondents were not justified in invoking Rules, 1967 for making his regular appointment in the cadre of helper, in my opinion, is without any merit. His initial appointment as Helper made on 07/04/77 was regularised & confirmed under Rules, 1967 vide order (Ann.R.2) and his initial appointment was never made under Rules, 1964.

Judgment on which Shri Shah placed reliance, in ***Ramswaroop Vs. State (supra)*** in my opinion is of no assistance to him for the reason that in that case **(supra)** this Court was examining as to whether person who was discharging duties of post of LDC is at all entitled for seeking declaration as semi permanent irrespective of the post on which he was appointed under Rules of 1964, whereas in present case, as discussed **(supra)**, this is not the question **for consideration** particularly when **the** scheme of Rules, 1964 was never invoked while he was appointed initially as helper on 07/04/77 (Ann.1). It is not disputed by Counsel for petitioner that pay scale which the petitioner is presently getting while holding the post of Fitter Gr.II and what has been claimed by him of Storekeeper is identical, therefore, no prejudice in my opinion,is further going to cause to the petitioner by virtue of his recent promotion vide order dt.05/12/02 (Ann.R/3) as is evident from Ann.R/5 also. In such circumstances, I find no justification to invoke writ jurisdiction

of this Court under Art.226 of the Constitution of India.

Consequently, this writ petition fails and is hereby dismissed. No order as to costs.

(Ajay Rastogi), J.

K.Khatri/598.